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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/776,242

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Michael R. Friton

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08/04/2006

BANNER & WITCOFF

1001 G STREET N W

SUITE 1100

WASHINGTON, DC 20001

EXAMINER

KAVANAUGH, JOHN T

ART UNIT

PAPER NUMBER

3728

DATE MAILED: 08/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/776,242

Applicant(s)

FRITON, MICHAEL R.

Examiner

Ted Kavanaugh

Art Unit

3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 7-23 and 30-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 7-23,30-37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Applicant's argument, see the Appeal Brief, filed July 10, 2006, with respect to the rejection(s) of claim(s) 7-23,30-37 under Slasor in view of Davis have been fully considered and are persuasive. The persuading argument in the paragraph bridging page 9 and 10, was a new argument previously not considered, therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made below.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 7,8,10,11,13-17,19,21-23,30,31,33,34,36,37 are rejected under 35 U.S.C. 102(b) as being anticipated by US 5497564 (Allen et al).

Allen teaches a foot-receiving device as claimed including a foot-housing member (shoe 12), a closure system (shown in figure 6) including a mesh (98), a securing system (adjustable band 96 and/or lacing eyelets 92 and shoe laces), one strap (adjustable band 96), and a secondary closure system (shoe lace and eyelets 22 of the shoe 12).

4. Claims 7,8,10,13-17,21-23,30,31 and 36-37 are rejected under 35 U.S.C. 102(b) as being anticipated by US 5992057 (Monti).

Monti teaches a foot-receiving device as claimed including a foot-housing member (shoe 102), a closure system (shroud 402) including a mesh (mesh portion 404 and other portions; see col. 3, lines 59-62), a securing system (zipper 408 located in multiple of different locations and other various closure systems including buttons, snaps and VELCRO; see col. 4, lines 7-16), and a secondary closure system (shoe lace 130 and corresponding loops or eyelets).

5. Claims 9,12,18,20,32,35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Allen as applied to the claims above, and further in view of US 6532687 (Towns et al).

Towns teaches a magnetic fastener arrangement for straps on footwear. It would have been obvious to provide the adjustable band/strap of Allen (25) with a magnetic fastener arrangement, as taught by Towns, to provide a fastener that is simple and easy to operate.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

7. **Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F. R. 1.111, including:**

-“The reply must present arguments pointing out the *specific* distinctions believed to render the claims, including any newly presented claims, patentable over any applied references.”

--“A general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section.”

-Moreover, “The prompt development of a clear issue requires that the replies of the applicant meet the objections to and rejections of the claims. Applicant should also specifically point out the support for any amendments


made to the disclosure. See MPEP 2163.06" MPEP 714.02. The "disclosure" includes the claims, the specification and the drawings.

8. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). Other useful information can be obtained at the PTO Home Page at www.uspto.gov.

In order to avoid potential delays, Technology Center 3700 is encouraging FAXing of responses to Office Actions directly into the Center at (571) 273-8300 (FORMAL FAXES ONLY). Please identify Examiner Ted Kavanaugh of Art Unit 3728 at the top of your cover sheet.

Any inquiry concerning the MERITS of this examination from the examiner should be directed to Ted Kavanaugh whose telephone number is (571) 272-4556. The examiner can normally be reached from 6AM - 4PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571) 272-4562.


Ted Kavanaugh
Primary Examiner
Art Unit 3728

TK
July 26, 2006